South Carolina House of Representatives

Legislative Update

David H. Wilkins, Speaker of the House

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CONTENTS

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House Week in Review

On Thursday night, following 4 long days of debate, the House gave second reading to H. 3362, the proposed general appropriation bill (state budget) for fiscal year 1995-1996. The vote on second reading on the budget was 89-22 in favor of the proposal. Much of the debate over the budget centered around increasing video poker licensing fees to help pay for property tax relief and the level of cuts for education. In the end, the House rejected attempts to raise video poker fees to help phase-in property tax relief and also rejected attempts to restore cuts in higher education funding. The House also debated a proposal under which a statewide referendum would have been held this November to determine if the state's voters favored a 1 percent increase in the sales and use tax for the purpose of providing property tax relief for owner-occupied residential property. However, this proposal was tabled by a vote of 65 to 44. Among other things, the bill provides $129 million in property tax relief for owner-occupied residences and an average 4.2 percent salary increase for public school teachers.

Because the general appropriation bill had not been given third---and final--reading at the time this Update went to press, a more detailed summary of features of the proposed 1995-1996 state budget will be included in the March 21 Update.

Bills Introduced

The following bills were introduced in the House between March 6 and March 9. Not all bills introduced last week are featured here. The bill summaries are arranged according to the standing committee to which the legislation was referred.

AGRICULTURE, NATURAL RESOURCES AND ENVIRONMENTAL AFFAIRS

Hours Authorized for Trawling Shrimp (H. 3750, Rep. Keyserling). Current law allows persons to trawl for shrimp according to the following schedule: opening day through September 15, 5am-9pm; and September 16 through the closing date, 6am-7pm. This bill would set new hours for such trawling, as follows: opening day through August 31, 5am-9pm; September 1 through October 31, 6am-8pm; and November 1 through the closing date, 6am-7pm.

Forest Best Management Practices Act (H. 3763, Rep. Sharpe). This bill designates the State Commission on Forestry as the agency responsible for providing public oversight and guidance for technical forest management practices and related activities in laws pertaining to forest lands. In carrying this responsibility out, the Commission may enter into contracts and memorandums of understanding with other state or federal agencies and must establish "Best Management Practices", related monitoring programs and other programs to assure that forestry practices are in compliance with state and federal regulations. For purposes of these provisions, "Best Management Practices" is a set of guidelines for multiple use forest management activity (such as timber harvesting, construction of roads for forestry purposes, etc.) with the aim of protecting the forest's air, water and soil quality, along with its productivity, wildlife habitat and aesthetic integrity.

Sterilization of Dogs and Cats Acquired from Animal Shelters, Humane Societies and Other Places (H. 3780, Rep. Keyserling). This bill requires the sterilization of dogs and cats which are acquired from animal shelters (whether public or private), animal control agencies operated by any of the State's political subdivisions, humane societies or public or private animal refuges. The dog or cat must be sterilized by a licensed veterinarian prior to acquisition, or, in the alternative, the person acquiring the pet must guarantee in writing that the dog or cat will be sterilized by a licensed

veterinarian within 30 days after acquisition (in the case of an adult animal) or within 30 days of the animal's sexual maturity (if the animal is immature). A person acquiring a non-sterile animal must submit to the shelter, etc. a statement from the veterinarian indicating that the sterilization requirement has been carried out, with this statement submitted within 7 days after the sterilization is performed. This sterilization requirement does not apply, however, to a privately-owned animal which the shelter, agency, etc. may have in its possession for any reason if the owner of the animal presents evidence that the animal is his property. All costs of sterilization must be borne by the person acquiring the animal, and if performed before sterilization, the cost of the procedure may be included in the fees charged for acquisition of the animal.

Violation of these provisions is a misdemeanor, punishable upon conviction by a fine not exceeding $200.

These provisions do not prevent any of the State's political subdivisions from adopting shelter policies which are more stringent than those requirements listed in this bill.

EDUCATION AND PUBLIC WORKS

No Tenure May Be Granted to Faculty at Public Colleges and Universities (H. 3767, Rep. Witherspoon). This bill prohibits tenure from being granted to non-tenured faculty at public colleges or universities. Furthermore, the governing board of each public college and university having tenured faculty must develop a new employment relationship (within 2 years after these provisions become effective) acceptable to the institution and to the tenured faculty, of which one component must include the elimination of tenure as part of the employment relationship.

School Health Act of 1995 (H. 3771, Rep. Cobb-Hunter). This bill is designed to improve the health status of students in South Carolina public schools.

Under these provisions, beginning with the 1997-1998 school year, and before entering public school, a student must have a health assessment conducted if he has not previously enrolled in public school in South Carolina and is entering (a) 4-year-old kindergarten, kindergarten or the first grade, or (b) second or higher grade and is under age 9. The assessment must be conducted by a physician, physician assistant, registered nurse, nurse practitioner or persons acting under dissection of a physician, nurse or nurse practitioner. The assessment at a minimum must include a health history, physical exam and various screening tests (such as for hearing and vision ability). A student who has not had an assessment at the time of entering public school may be granted a limited period following enrollment to obtain an assessment. Assessments are not required of students

who adhere to a religious denomination which opposes such assessments. Information contained in these assessments is confidential and cannot be disclosed except in limited circumstances (such as if a medical emergency exists, in which case the information can be disclosed to medical personnel, or to certain school district personnel to administer these provisions or protect the student's health).

The bill also requires each school district, in conjunction with the Department of Health and Environmental Control (DHEC), to convene a district health planning committee, which includes, among others, parents, teachers and representatives of various health, education and other service providers (e.g., local departments of education, social services, mental health, etc.). Each committee must conduct an assessment of the health status and health needs of the district's children and youth, of health needs, and the community resources available and needed to address those health needs. Based on the assessment, the committee must develop a school health services program by July 1, 1996. The program must be an interagency multidisciplinary service delivery plan to meet the comprehensive health needs of the district's children and youth; assign responsibility for provision of services; deliver (where practical) services on the school site; and maximize use of existing federal, state, local and private funding sources. The program must include [1] health and nursing services (such as treating minor illnesses and injuries, administering medications and assisting families in obtaining health care); [2] nutrition services (e.g., counseling for students whose medical conditions place them at risk for nutritional problems); [3] counseling and social work services (such as mental health and drug abuse services); and [4] health education in a school setting which enhances healthy practices that promote students' good health and disease prevention.

Under these provisions, a school health services program may not provide abortion counseling, advocate abortion or refer a student to an organization for abortion counseling, nor may the program distribute contraceptives or related devices at public schools.

A school health services program may, but is not required to, include a healthy school environment component (addressing the physical and aesthetic surroundings and the psycho-social climate and culture of the school) and health promotion programs for school staff that provide health assessments, health education and health-related fitness services.

The district health planning committee must formulate charges and a sliding fee schedule for the program's services and develop/implement procedures for billing third party providers. A student may have access to or receive services under the program if he has obtained consent from his parent or guardian. A student's health record and information obtained on a student in connection with the program or services rendered under it is confidential and can only be released in limited circumstances (such as in a medical emergency or to school district personnel for health reasons).

These health services programs must be implemented no later than the first day of the 1997-1998 school year.

The bill also requires DHEC and the Department of Education to convene an expanded school health services statewide committee, consisting of public and private sector representatives of health and business communities. This committee must develop a competitive grant process, solicit proposals and award grants for expanded services under the school health services program to schools and school districts where there is a high incidence of medically underserved and high-risk children. The bill lists criteria for evaluating incidence of underserved and high risk children and requires grants to be awarded to schools and school districts with innovative and collaborative services and programs which have the greatest potential for promoting the health and well-being of medically underserved high-risk students. Expanded school health services under these provisions may not include distribution of contraceptives, abortion counseling, services or advocacy, or referral to an organization for abortion counseling. DHEC and the Department of Education also must oversee delivery and coordination of the school health services programs and periodically review and evaluate these programs' effectiveness and adequacy. These two departments also must report to the Governor, Human Services Coordinating Council and Joint Legislative Committee on Children and Families information on effectiveness of the programs and district program budgets. Upon review of these reports, the Human Services Coordinating Council must develop in conjunction with those departments a joint budget request for expanded school health services programs, and must also provide advisory assistance to the district health advisory committees as needed.

The bill also provides that no person is liable for injuries caused by act or omission in administering services under this health services program, except in cases of negligence.

School Boards To Establish School Uniform Policies (S. 98, Sen. Washington). This bill authorizes a school board of trustees to promulgate regulations to establish a school uniform or uniform dress code policy within its district and by which the district's elementary, junior and middle schools may adopt a school uniform or uniform dress policy. Before a school can require a student to wear uniform dress, the specific uniform dress must be determined in consultation with the School Improvement Council and the parents of the students attending the school. Additionally, these dress requirements cannot be implemented with less than 3 months' notice to parents and unless a method is initiated for assisting students who cannot afford to purchase the uniforms or uniform dress.

Revision of Membership of Commission on Higher Education (S. 365, Sen. Setzler). Current law provides for an 18-member Commission on Higher Education, with 2 members appointed by the governor from each of the state's 6 congressional districts (upon recommendation of the district's legislative delegation) and 6 at-large persons appointed by the governor with the advice

and consent of the Senate. This bill specifies that the Commission's purposes are to provide overview and oversight of services provided by public higher education institutions, serve as an advisor to the governor and General Assembly and advocate interests of students attending institutions of higher learning, and under this bill the size of the Commission would be reduced to 11 members (appointed by the governor), with 6 members representing the state's congressional districts (1 from each district); 3 representing the state's public colleges and universities, 1 representing independent colleges and universities, and 1 member being at-large and serving as chairman. The These 11 members must meet various qualifications, as listed below:

(a) Congressional appointees: Must have the advice and consent of the Senate. Each "congressional appointee" must have experience in business, the education of future leaders and teachers, management, or policy. Additionally, these appointees must not have been, during the succeeding 5 years, a member of a governing body of a public institution of higher learning in South Carolina, and must not be employed or have immediate family members employed by any of the State's public colleges and universities. These appointees could serve a maximum of 2 consecutive 4-year terms;

(b) Representatives of Public Colleges and Universities: Would serve ex-officio, with the bill specifying it would not be a conflict of interest for a voting ex-officio member to vote on matters pertaining to their individual college or university. Of these 3 members, 1 must serve on a board of trustees of 1 of South Carolina's public senior research institutions (Medical University of South Carolina, Clemson University, University of South Carolina); 1 must serve on the board of trustees of one of the public 4-year institutions of higher learning (The Citadel, South Carolina State University, Winthrop University, etc.); and 1 member must be a member of the local area technical education commissions or the State Board for Technical and Comprehensive Education. These representatives would serve 2-year terms;

(c) Representative of Independent Colleges and Universities: This member must be serving as a member of the Advisory Council of Private College Presidents, cannot serve more than 2-consecutive 2-year terms, and serves as a non-voting member.

(d) At-Large appointee: Serves as chairman, limited to one 4-year term.

The bill also requires the Commission to make recommendations concerning policies, financing, etc. of state-supported institutions of higher learning to the Governor's Office and General Assembly (as currently opposed to the Budget and Control Board and General Assembly) and allows the House Ways and Means Committee and Senate Finance Committee to refer to the Commission for study requests of institutions of higher learning for new or additional appropriations for operating or other purposes and for establishment of new or expanded programs. Additionally, the executive director must be appointed by the Commission, with the director managing and carrying out the commissions' duties. The director is not subject to the

State Employee Grievance Procedure Act and can be dismissed without cause. The commission's professional staff complement must be established by the executive director, instead of by the commission.

Finally, the bill provides that terms of the current members of the Commission expire on July 1 of this year, at which time new members would be selected in accordance with these provisions.

JUDICIARY

Compacts for Deployment of National Guard In Other States for Purposes of Stopping Drugs (H. 3758, Rep. Cotty). This bill authorizes the governor, with the consent of Congress, to enter into compacts and agreements for deployment of the National Guard with governors of other states for purposes of drug interdiction, counterdrug activities and demand reduction activities (hereafter referred to as "antidrug activities"). To facilitate such agreements, the bill enacts the "National Guard Mutual Assistance Counterdrug Activities Compact." (With regard to congressional consent for the compact, the bill states that the General Assembly finds that such consent may already be in place under a section of federal code, and that if such consent indeed has not been given then this compact is not effective until congressional consent is given.)

Adoption of this compact would allow for provision of mutual assistance among the compact's members states in utilizing the National Guard for antidrug activities (in other words, a state would be authorized to request another state for use of the latter's National Guard in these activities). Additionally, the National Guard of South Carolina would be able to enter into mutual assistance and support agreements with 1 or more law enforcement agencies operating within South Carolina to facilitate cooperative efforts in attacking drug trafficking. This compact would be effective once adopted by any two states, and a "party state" (i.e., state belonging to the compact) could withdraw from the compact by enacting a statute repealing the compact.

For purposes of this bill, "drug interdiction and counterdrug activities" is the use of National Guard personnel, while not in federal service, in law enforcement activities intended to reduce the supply or use of illegal drugs in the United States. Among other things, these activities include making available equipment of the Guard to law enforcement officials for law enforcement purposes and providing Guard personnel and other equipment to aid government officials and agencies otherwise involved in prosecution or incarceration of individuals processed within the criminal justice system who have been arrested for illegal drugs. "Demand reduction" is the provision of available Guard personnel, equipment, etc. to federal, state, local and civic organizations for prevention of drug abuse and reduction in demand for illegal drugs.

Upon request of the governor of a party state for assistance in these antidrug activities, the governor of a responding state may send all or a portion of his National Guard forces to the other state for such activities, and the requesting state's National Guard forces then would be placed under temporary operational control of the military authorities of the requesting state. The governor of a party state is permitted to withhold his State's guard forces from deployment in another state and to recall the forces deployed in a requesting state. When a requesting state receives Guard forces from another state for purposes of these antidrug activities, the requesting state must assume responsibility for liability for the dispatched Guard units (whether the liability may arise under laws of the requesting or the responding states), reimbursement of the responding state for damages to the equipment and operating expenses of the dispatched Guard units, and payment of compensation and death benefits. The bill also provides that officers and enlisted personnel of the Guard performing duties pursuant to this compact are subject to and governed by the provisions of their home state's Code of Military Justice, whether performing duties in or outside their home state.

The bill also authorizes South Carolina's Adjutant General to enter into a mutual assistance and support agreement with 1 or more law enforcement agencies of this State and with the National Guard of other party states to provide personnel, assets and services for these antidrug activities, provided all parties to the agreement are not specifically prohibited by law from performing these activities. The agreement must set forth the powers, duties and obligations of the parties to the agreement, which, among other things, must include the duration of the agreement, the manner of financing the agreement, and the chain of command or delegation of authority to be followed by Guard personnel acting under the agreement's provisions. Before the agreement becomes effective, it must be submitted to the South Carolina Attorney General's Office for approval. The attorney general may delegate his approval authority to the appropriate attorney for the South Carolina National Guard. The attorney general or his agent in the Guard must approve the agreement unless it is not in proper form, it does not meet the requirements of this act, or unless it does not conform with South Carolina laws.

This compact does not authorize or permit Guard units or personnel to be placed under operational control of a person not having National Guard rank or status required by law for the command in question, nor does the compact deprive a properly-convened court of jurisdiction over an offense or a defendant because the Guard (while performing duties under this compact) was utilized in achieving an arrest or indictment. Additionally, the compact is not to be construed as preventing the governor of a party state from delegating his responsibilities or authority respecting the National Guard, but for this compact's purposes, the governor must nor delegate the power to request assistance from another state.

Violent Offenders Who Escape Subsequently Ineligible for Parole (H. 3764, Rep. Askins). Under these provisions, a person serving a sentence for a violent crime who escapes or attempts to escape from incarceration must serve the remaining unserved portion of the sentence for the violent crime, plus the additional sentence imposed for escaping, without eligibility for parole.

Persons Who Commit or Threaten to Commit Domestic Violence on a Family or Household Member Must Be Arrested (H. 3765, Rep. Meacham). This bill makes it mandatory, instead of optional, for a law enforcement officer to arrest a person who commits or has recently committed an act of domestic violence or domestic violence of a high and aggravated nature, or who has violated terms of an order of protection under the "Protection from Domestic Abuse Act."

State Lottery (H. 3772, Rep. Scott). This joint resolution is identical to H. 3021, introduced two months ago, with both joint resolutions proposing to amend the Constitution to authorize a state lottery. Under both proposals, revenues from a state lottery would be paid into a state lottery fund, to be invested by the State Treasurer, with interest earned remaining a part of the fund. No more than 15 percent of lottery revenues each year could be used for the lottery's operational expenses; 50 percent of revenues must be expended as prizes, while remaining revenues must be used for nonrecurring expenses for public education (including public higher education), health care, water and sewer infrastructure, other capital improvements, the reduction of bonded indebtedness, or for any combination of these purposes as the General Assembly provides by law.

If the General Assembly approves this joint resolution (requires two-thirds approval of the elected members of the House and the Senate), then the lottery proposal would be submitted to the voters for approval at the November 1996 general election. (Both H. 3021 and H. 3772 are pending in the House Judiciary Committee.)

Life Imprisonment without Parole (H. 3773, Rep. Rogers). Under current South Carolina law, anyone with three convictions (whether under federal or any state law) for a violent crime must be sentenced to life imprisonment without parole upon a third conviction for such crime in South Carolina (except when the death penalty is imposed). This bill would delete those provisions and in their place provide for life without parole based on categories of crimes, here listed as "most serious offenses" and "serious offenses." Under these provisions, a "most serious offense" is a violent crime and any other felony which carries a maximum imprisonment of 30 years (such as voluntary manslaughter, certain drug trafficking offenses, etc.), and also includes federal or out-of-state convictions for such felonies. A "serious offense" is one within the jurisdiction of General Sessions Court (except for most traffic offenses) and any federal or out-of-state convictions for offenses falling under that court's jurisdiction. However, for purposes of sentencing under this act, a "most serious offense" or

"serious offense" does not include a conviction or plead of guilty/nolo contendere occurring before January 1, 1980.

Under these provisions, except when the death penalty is imposed, a person convicted of or pleading guilty/nolo contendere to a most serious offense must be imprisoned for life if he had 1 prior conviction or plea of guilty/nolo contendere for a most serious offense, while a person convicted of or pleading guilty/nolo contendere to a serious offense must be imprisoned for life if he has 4 or more prior convictions for a serious offense. Persons sentenced pursuant to these provisions cannot be considered for or granted early release for purposes of relieving prison overcrowding.

The bill also allows, but does not require, a presiding judge, law enforcement agency, Board of Probation, Parole and Pardon Services, or state or local correctional facility to provide offenders convicted of a "most serious offense" or "serious offense" notice of the sentence which must be imposed upon subsequent conviction for either of those offenses. The adequacy of any notice provided, or failure to provide notice, is not subject to judicial review, and the State or its political subdivisions are not liable if the notice provisions are not followed.

The sentencing provided under this act does not apply if the mandatory minimum sentence for the instant adjudication under other provisions of law would exceed the provisions of this act.

Probate Judges May Not Serve as Personal Representatives of Estates **(H. 3776, Rep. Neilson).** This bill prohibits a Probate Judge, except in limited circumstances, from serving as a personal representative for an estate of any person within his jurisdiction. Additionally, a Probate Judge or employee of that court cannot serve as a conservator of an estate of a protected person, although that judge or employee may serve as a conservator of the estate of a family member if such service does not interfere with proper performance of the judge's or employee's official duties. For these purposes, a "family member" is a spouse, parent, child, brother, sister, nephew, niece, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent or grandchild.

LABOR, COMMERCE AND INDUSTRY

South Carolina Fair Dealing With Government Civil Rights Act of 1995 **(H. 3759, Rep. Fair).** This bill deletes the State's Assistance for Minority Businesses program (which currently is a part of the State's Procurement Code) and minority goals/set-asides for highway, bridge and other projects.

Fees for Continuing Education Requirements for Insurance Agents Not To Be Imposed on Persons Exempt from These Requirements **(H. 3760, Rep. Klauber).** This bill prohibits fees for continuing insurance education

requirements from being charged to, imposed upon or collected from or on behalf of persons exempted from these continuing insurance requirements.

Consumer Loans **(H. 3766, Rep. Neal).** This bill amends a number of provisions concerning consumer finance businesses and loans, as follows:

---Requires licensees (i.e., those licensed to lend in amounts of $7,500 or less) to provide additional loan information in annual reports they must submit to the State Board of Bank Control. Among other information, each report must include the total number of loans and aggregate dollar amounts made by the lender which renewed existing accounts, the total number of loans and aggregate dollar amounts made to new borrowers, and the total number of loans and aggregate dollar amounts outstanding at the beginning and end of the reporting period.

---Imposes new maximum finance charges for loans over $150 but not exceeding $2,000---$25 per $100 on the portion of the cash advance not exceeding $600; $18 per $100 on the portion exceeding $600 but not more than $1,000; and $12 per $100 on the portion exceeding $1,000 but less than $2,000. (Currently the maximum charges are $20 per $100 on portions of the advance not exceeding $200; $18 per $100 on portions over $200 but not more than $600; $11 per $100 on portions over $600 but not greater than $1,000; and $9 per $100 on the portion exceeding $1,000 but less than $2,000.) Provides that the initial charge on loans in excess of $150 is subject to refund upon prepayment of the loan. For loans over $2,000 but not exceeding $7,500, increases the maximum finance charge from $7 to $9 per $100 of the cash advance.

---Prohibits a licensee from renewing a loan more than once in a 15-month period where the cash advanced to the customer is less than 10 percent of the net outstanding loan balance at the time of renewal.

---Prohibits the loan finance charge for supervised loans of $600 or less from exceeding $25 per $100 of the amount loaned.

---Requires supervised lenders, in filing their annual reports with the State Board of Financial Institutions, to provide additional information concerning their loans. As examples, the report must include the total number of loans and aggregate dollar amounts outstanding at the beginning and end of the reporting period and the highest annual percentage rate charged by the lender on loans of various sizes. Also prohibits a supervised lender from renewing a loan of $1,000 or less more than once during a 15-month period where the cash advanced to the customer is less than 10 percent of the net outstanding loan balance at the time of renewal.

---Revises conditions under which a transaction is unconscionable under the Consumer Protection Code and remedies available in such cases. Deletes a provision under which a person may recover treble the damages sustained because another person has engaged in unconscionable conduct in

collecting a debt from a transaction and in place of that provision states that a consumer has a cause of action to recover actual damages, and in an action other than a class action, aright to recover from the person engaging in unconscionable conduct a penalty of between $100 and $1,000. In considering whether the transaction is unconscionable, the court may also consider to taking a nonpurchase money nonposessory security interest in certain belongings (such as clothing, furniture, etc.) of the consumer and his or her dependents. The bill further expands the definition of "communication" as pertains to engagement in unconscionable conduct for purposes of these consumer transactions, such that a creditor or debt collector may not engage in certain behavior in trying to reach the debtor. Among other things, the creditor or debt collector may not publish a list of consumers who allegedly refuse to pay debts (except to a consumer reporting agency); may not communicate with a consumer at an unusual time or place (such as late at night); may not contact a consumer at his place of employment after the consumer of employer has requested that no contacts be made there; and may not advertise for sale any debt to coerce payment of the debt. Additionally, "false representations," as applies to fraudulent, etc. misrepresentations in connection with collection of a consumer credit transaction, includes, among other things, the character, amount or legal status of any debt; a claim of the individual that he is an attorney; or a claim or implication that the consumer committed any crime, or other conduct to disgrace the consumer.

---Prohibits actions concerning unconscionable conduct in collecting debts from consumer credit transactions from being commenced in court until at least 30 days after facts/circumstances of a claim of such conduct has been filed with the Administrator of the Department of Consumer Affairs. Requires the administrator to provide to the Director of the Board of Financial Institutions copies of claims of unconscionable conduct in collecting a debt filed against a supervised or restricted lender, and the administrator must take steps to investigate, evaluate, and attempt to resolve such complaints. Also requires the administration of the Department of Consumer Affairs to develop a written pamphlet that explains the rights and responsibilities of consumers who obtain loans under the state's banking or consumer protection code. The pamphlet must be given to a consumer at the time the initial loan is made whenever the amount financed is $2,000 or less and must be readily available to all consumers at all times in each loan office.

---Allows supervised lenders who previously were licensed as restricted lenders to be licensed as restricted lenders again, if all persons related to such persons make the same election.

---Establishes an 8-member legislative study committee (3 members of the House, 3 from the Senate, the State Consumer Advocate or designee, and the Director or his designee of the Consumer Finance Division of the State Board of Financial Institutions) to study the impact of this act on the consumer finance industry, with the committee required to report its

findings and any recommendations to the General Assembly by January 1, 1998. Additionally, on or after July 1, 1998, a second review of the consumer finance industry must be commenced by an 8-member legislative committee (with same make-up as the committee making the first review of the consumer finance industry). This committee must report its findings and any recommendations to the General Assembly by January 1, 1999. Existing staff of the Senate Banking & Industry and House Labor, Commerce and Industry Committees, and other legislative staff members as may be available, are to be used in performing both reviews of the consumer finance industry.

Drug Testing of Prospective State Employees (H. 3777, Rep. Neilson). This bill would allow, but not require, state agencies and departments to test prospective employees for drugs as a condition of employment. (A virtually identical bill to allow such testing, H. 3491, was passed by the House during the 1994 session but subsequently died in the Senate.) The employer could use a verified or confirmed positive drug test result or a prospective employee's refusal to take the test as grounds for refusing to hire the individual. The bill lists the criteria for testing, collection and storage of samples. Testing and retesting for presence of drugs must be carried out within terms of a written policy which is available for review by prospective employees.

At the time of initial testing, enough of a sample must be taken for the prospective employee to complete the test and, if desired by the employee (and at his expense), a confirmation test. If the initial drug test is positive, then the prospective employee may request a confirmation test for the rest of the sample. If results of the confirmation test are negative, then results of that test are invalid and testing from another sample must be conducted if the prospective employee desires; in this situation (i.e., when results of the confirmation test are negative), the employer must not give consideration to results of the first test when deciding whether or not to hire the prospective employee. The employer would bear the costs for initial testing for drugs, but the prospective employee would bear the cost for a confirmation test or retesting.

The bill also lists conditions under which an employer can and cannot be sued in connection with a drug testing program. As examples, an employer cannot be sued for failing to establish a drug testing program but can be sued if his refusal to hire the prospective employee was based on a false test result. Furthermore, the bill provides that test results, information, etc. received by an employer through the drug testing program is confidential, not subject to disclosure or use as evidence except in proceedings related to action taken by an employer under these provisions.

Uniform Standards for Pre-Employment and Employment Drug Testing of State Employees (H. 3778, Rep. Neilson). This bill is similar to H. 3301, introduced during the 1993-1994 session, authorizing drug testing both for state employees and prospective employees. Under these provisions, a state employee (hereafter referred to as "employee") required by his employer to

submit to drug testing must be provided a written policy statement from the employer at least 30 days before implementation of a drug testing program. Among other things, this policy statement, contain a general statement of the employer's policy on employee drug use (which must identify the grounds on which the employee is required to submit to the test and actions the employer may take against an employee based on a positive drug test); circumstances under which drug testing may occur; the consequences of refusing to submit to testing; and a list of all drugs for which the employer might test. Employers may require job applicants to submit to a drug test as a condition of employment and use the applicant's refusal to submit to testing or a positive confirmed test result as a basis for refusal to hire. An employer also may require all employees to submit to "reasonable suspicion drug testing" (i.e., where employer has a reasonable suspicion the employee is using illegal drugs) and neutral selection, routine and follow-up testing. An employee may be required to undergo "neutral selection" or "routine" drug tests if he holds a position where drug use may endanger the public or other employees; if the test is part of a routinely-scheduled employee fitness for duty physical exam (conducted on all members of the employee's classification or group); or as a follow-up to drug rehabilitation or a positive confirmed test result from previous drug testing. The employer would pay costs of all drug tests to which he requires or requests employees or job applicants to submit.

The bill lists procedures for conducting the tests and collection and documentation of results, with specimens taken or collected by licensed physicians or nurses; qualified persons employer by approved laboratories; or a person considered qualified by the Budget and Control Board. The Budget and Control Board also must ensure the establishment of a program to train and certify persons to collect specimens and conduct on-site drug tests in the workplace. If a drug test yields a positive result, then the employee, at his expense, would be permitted to have his specimen retested. The employer would not be allowed to discharge, discipline, refuse to hire or require rehabilitation of an employee if the positive test result had not been verified by a confirmatory test. Furthermore, an employer could not discharge, discipline or discriminate against an employee who, for the first time, has a positive confirmed drug test result under that employer unless the employee fails to complete a drug assessment or rehabilitation program, and his work performance has been inadequate, he has caused or contributed to an accident, or has taken or failed to take other action which ordinarily would result in the discharge or discipline of the employee. An employee or job applicant with a positive drug test result could not because of that result be defined as a person with a "handicap", and an employer who discharges or disciplines an employee because of a positive drug test result is considered to have discharged or disciplined the employee for cause. These provisions would not be retroactive and would not negate an employers' right to conduct drug testing before these provisions are effective. Employees who refuse to submit to drug testing may be disciplined, discharged or referred to assessment and/or drug rehabilitation.

Information and test results received by the employer through the drug testing program are confidential, with information related to drug tests released to others beside the employee or job applicant only if the employee or job applicant consents to such release; the information is necessary for administrative or judicial proceedings or is by law required to be disclosed to federal or state agencies; the information is necessary for a drug rehabilitation program; or if such release will prevent or minimize risks to public health or safety. The bill also lists standards by which labs must abide in conducting confirmation drug tests and contents which must be included on lab drug test reports.

A person alleging violations of this act may bring an action for injunctive relief and/or damages, with damages limited to recovery of compensatory damages directly resulting from injury or loss caused by each violation of these provisions (and damages not including noneconomic losses). Reasonable attorney's fees may also be awarded to the person if the employer is found to have knowingly or recklessly violated these provisions. Relief may include, among other things, reinstatement of the person to the same position he held before the discharge or an equivalent position, and compensation for lost wages and benefits to which he would have been entitled but for violation of these provisions. An employer who complies with this act, however, is immune from civil actions arising from drug testing programs or procedures. A person may not sue an employer with a drug testing program for libel or slander unless confidential information pertaining to testing is unlawfully released; information was based on incorrect test results; or the results are disclosed with malice.

If adopted, these provisions would be effective July 1, 1995.

Continuing Education Requirements for Real Estate Property Managers **(H. 3779, Rep. Elliott).** This bill requires property managers, as a conditions of license renewal, to complete 8 hours of approved course instruction biennially as prescribed by the South Carolina Real Estate Commission, with this 8 hours' instruction including a minimum of 2 hours' instruction on federal and state laws affecting property managers and the remaining hours including property management-related courses as approved by the Commission.

Auto Insurance Reform **(H. 3781, Rep. Felder).** This bill amends provisions pertaining to the underwriting of auto insurance in South Carolina. Among other things, the bill deletes the requirement that automobile insurers file an objective standards rate for auto insurance; lists provisions under which a safe driver discount is not to be included in one's premium calculation; and requires the state rating and statistical division to develop and file a loss component for private passegner auto insurance coverages based on the total experience of all insurers in South Carolina, including risks ceded to the Reinsurance Facility. The bill also requires anyone operating or allowing operation of an uninsured motor vehicle to have that vehicle impounded until he posts sufficient liability

insurance and pays any storage and impoundment fees, along with other fines and fees imposed for opearting an uninsured vehicle. (Note: Because of computer "down time", only a limited summary of this bill was prepared, but a more extensive one will appear in the March 21 Update.)

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

Transfer of Prescriptions Between Pharmacies in State (H. 3751, Rep. Sandifer). This bill authorizes the transfer of prescriptions between one pharmacy and another in South Carolina, under which the pharmacist receiving the transferred prescription may dispense a single refill. The bill lists record-keeping information the transferring pharmacist and the pharmacist receiving the prescription must keep. Among other things, the transferring pharmacist must reduce any remaining refills by one and communicate the transfer directly to the other pharmacist, while the pharmacist receiving the transfer must put the word "transfer" on the face of the transferred prescription.

Department of Social Services Must Study Child Support Enforcement Guidelines (H. 3770, Rep. Govan). This joint resolution requires the Department of Social Services to study the child support guidelines promulgated by the Department and make a report concerning an explanation of the process undertaken in developing the guidelines, justification for the amount of support required under the guidelines, and recommendations for revisions to enhance the equity and fairness of the guidelines and the application of the guidelines. This report must be made to the General Assembly by the end of 1995.

Licensed Funeral Directors May Act as Agents for Life Insurers in Connection with Preneed Funeral Contracts (S. 463, Sen. Passailaigue). This bill allows licensed funeral directors employed by a licensed funeral home in this state to act as an agent for a life insurer doing business in South Carolina, but only in connection with funding of a preneed funeral contract. The bill also provides that a funeral director licensed as an agent for a life insurer is subject to prohibitions against soliciting and advertising as relates to preneed funeral contracts. Finally, the bill prohibits an irrevocable trust funded preneed funeral contract from being converted to an insurance-funded preneed funeral contract.

WAYS AND MEANS

Retirement Service Credit for Military Service (H. 3752, Rep. Wright). This bill revises the determination of earnable compensation for purposes of establishing credit for military service under the South Carolina Retirement System, such that if a member's military service was rendered

prior to his employment by an employer, then the member's payments must be determined on basis of his earnable compensation at the time he first became a member of the system, adjusted for inflation to the time of discharge from the service. This inflation adjustment must be made by use of the Consumer Price Index.

Retirement Service Credit for Active Duty Service in National Guard (H. 3753, Rep. P. Harris). Current law allows members of the General Assembly Retirement System to receive additional credited service for periods of military service. This bill specifies that such credit for military service also includes time spent on active duty service in the South Carolina National Guard.

Public Service Authority Prohibited from Expending Public Monies for Certain Contributions (H. 3757, Rep. Kirsh). This bill prohibits the Public Service Authority from expending public monies for contributions to institutions, organizations, individuals or other causes unless the expenditure (1) is for a public purpose, and (2) relates to the purposes for which the authority was created.

State Agencies May Not Provide Check Cashing Services for State Employees (H. 3761, Rep. Kirsh). This bill prohibits state agencies from offering or providing check cashing services for state employees.

Credits for New Jobs (H. 3768, Rep. Fulmer). This bill deletes the requirement that an "S" corporation must qualify to use the fee in lieu of taxes in order to qualify for a nonrefundable credit against income taxes due. The bill also provides that members of limited liability companies and partners of registered limited liability partnerships qualify for a nonrefundable income tax credit if that company or partnership (formed under various provisions of South Carolina law) would be eligible for the income tax credits but for their lack of corporate status. The amount of the credit allowed a member of a limited liability company or partner of a registered limited liability partnership is equal, respectively, to the percentage of the member's limited liability company interest or partnership interest multiplied by the amount of the credit had the company (or partnership) been a corporation. Credits claimed under these provisions but not used in a taxable year may be carried forward from the close of the taxable year when the credit is earned by the company or partnership, but the credit taken in 1 taxable year cannot exceed 50 percent of the taxpayer's income tax liability.

Partial Property Tax Exemption (H. 3769, Rep. Fulmer). This bill extends the five-year partial property tax exemption currently allowed for new manufacturing facilities and new corporate headquarters and office facilities to unrelated purchasers. In order to qualify for the exemption, the purchaser must acquire the facilities in an arms-length transaction and preserve the existing facilities and jobs. The partial exemption applies for

the purchaser for 5 years if the purchaser otherwise meets the exemption requirements.

Lump-Sum Payments for Unused Leave **(H. 3774, Rep. Rogers).** Under current law, upon termination from state employment, a person may take both annual leave and a lump-sum payment for unused leave, with this combination not allowed to exceed 45 days. This bill authorizes the employee to receive the lump-sum payment for unused leave (not exceeding 45 days) without regard to earned leave taken during the calendar year in which the employee terminates.

WITHOUT REFERENCE

Appropriations from Capital Reserve Fund **(H. 3363, House Ways and Means Committee).** This joint resolution appropriates approximately $73.5 million in monies in the Capital Reserve Fund for fiscal year 1994-1995 for the following purposes:

(1) Budget and Control Board:
Federal Retiree Settlement.....$12,500,000
(2) Budget and Control Board:
Catawba Indian Settlement.....2,500,000
(3) State Election Commission:
1996 Primary Elections.....500,000
(4) Budget and Control Board:
Employee Benefits
Employee Bonus.....32,900,000
(5) Department of Education:
School Bus Parts.....2,000,000
(6) School for Deaf and Blind:
Dorm Refurbishing.....500,000
(7) University of Charleston:
Property Acquisition.....7,000,000
(8) Department of Corrections:
Vehicles/Maintenance.....2,211,360
(9) Department of Juvenile Justice:
Vehicles/Equipment.....875,000
(10) State Law Enforcement Division:
Vehicles/Equipment.....1,660,000
(11) Judicial Department:
Pilot Arbitration Program.....100,000
(12) Department of Natural Resources:
Vehicle Replacement.....1,000,000
(13) Department of Natural Resources:
Boating Facility--Match
Federal Funds.....200,000
(14) Department of Health and Environmental Control:

Environmental Quality Control Equipment.....277,000
(15) Department of Health and Environmental Control:
Coastal Council Beach Renourishment.....5,200,000
(16) Department of Parks, Recreation and Tourism:
Palmetto Trail.....800,000
(17) Department of Archives and History:
History Center.....1,086,511
(18) Department of Insurance:
Computer Equipment.....1,000,000
(19) Department of Labor, Licensing and Regulation:
Fire Academy Equipment.....250,000
(20) Clemson PSA:
Camp Hope.....672,000
(21) Division of Veterans Affairs:
Veterans Cemetery.....220,000

TOTAL APPROPRIATIONS: $73,451,871

The $32,900,000 appropriated for employee bonuses in this joint resolution (item #4) must be used to provide an average 2.6 percent performance bonus for all employees, including classified, unclassified and local providers. The amount of the bonus for each employee must be based on the most recent Employee Performance Management System (EPMS) evaluation and must be determined based on a plan established by the agency director. The amount of this bonus for employees not subject to EPMS evaluation must be determined by objective performance evaluation as determined by the agency director. The performance bonus is effective the first day on or after November 16, 1995; however, employees in probationary status as of that date are not eligible for the bonus. The amount of each employee's bonus paid from this Reserve Fund must be in proportion to the amount the employee's salary is paid from general funds. This performance bonus is not part of the employee's salary, nor is it earnable compensation for purposes of employer or employee contributions to the respective state retirement systems.

If adopted, this joint resolution would be effective 30 days after completion of the 1994-1995 fiscal year.

Tax Credits for Recycling Facilities (H. 3775, Rep. H. Brown). This bill allows a taxpayer who is constructing or operating a "qualified recycling facility" to take a credit in the amount of 30 percent of the taxpayer's investment in recycling property during the taxable year. This credit may be used to reduce the taxpayer's corporate income tax liability, sales and use tax liability, corporate license fees or similar taxes. Any unused credit for a taxable year may be carried forward to subsequent

taxable years until the credit is exhausted. For purposes of these tax credits, a "qualified recycling facility" (hereafter called "facility") is one certified by the Department of Revenue and Taxation and which includes all property (real and personal) incorporated into or associated with the facility located (or to be located) within South Carolina. The facility must be used by the taxpayer to manufacture products for sale composed of at least 50 percent postconsumer waste material (whether by weight or volume). The minimum investment level for such a facility must be at least $300 million, incurred by the end of the 5th calendar year after the year when the taxpayer begins construction or operation of the facility. If the facility does not meet the $300 million minimum investment within that time period, then the taxpayer's tax liability for the current taxable year is increased by an amount equal to the credit used to reduce tax liability in earlier years.

The bill also provides that the annual fee for these facilities under fee in lieu of taxes is available for a maximum of 30 years, except that for projects constructed or placed in service during more than 1 year, the annual fee is available for a maximum of 37 years. Under fee-in-lieu, the assessment ratio for these facilities cannot be less than 3 percent (and must be 3 percent for purposes of fees that may be due on undeveloped property for which title has been transferred to the county by of for the operator or owner of the facility), and any machinery and equipment foundations used for a facility is considered tangible personal property. Additionally, the total costs of all investments made for a facility are eligible for these fee payments.

The bill also allows a taxpayer who is constructing or operating a facility to petition the Department of Revenue and Taxation for use of separate accounting with respect to all or part of the taxpayer's business activities or for use of any other method to determine the taxpayer's taxable income. The Department then must forward the petition with its comments on the economic impact of the suggested method to the Advisory Coordinating Council for Economic Development. The Department may approve the petition if the Council certifies that the benefits of the method exceed the costs to the public.

Finally, the bill provides a sales tax exemption for property and fuel used by or for these qualified recycling facilities.

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